

§ 1.904(g)-0

26 CFR Ch. I (4-1-12 Edition)

2(i)(1). If the taxpayer, other than a financial services entity as defined in § 1.904-4(e)(3), has no unused foreign taxes in the pre-2007 separate category for high withholding tax interest, then the loss account balance shall be recaptured in subsequent taxable years solely as income in the post-2006 separate category for passive category income. If the taxpayer is a financial services entity, as defined in § 1.904-4(e)(3), and has no unused foreign taxes in the pre-2007 separate category for high withholding tax interest, then the loss account balance shall be recaptured in subsequent taxable years solely as income in the post-2006 separate category for general category income.

(4) *Elimination of certain separate limitation loss accounts.* After application of paragraphs (h)(1) through (h)(3) of this section, any separate limitation loss account allocated to the post-2006 separate category for passive category income for which income is to be recaptured as passive category income, as determined under those same provisions, shall be eliminated. Similarly, after application of paragraphs (h)(1) through (h)(3) of this section, any separate limitation loss account allocated to the post-2006 separate category for general category income for which income is to be recaptured as general category income, as determined under those same provisions, shall be eliminated.

(5) *Alternative method.* In lieu of applying the rules of paragraphs (h)(1) through (h)(3) of this section, a taxpayer may apply the principles of paragraphs (g)(1) and (g)(2) of this section to determine recapture in taxable years beginning after December 31, 2006, of separate limitation losses and overall foreign losses incurred in taxable years beginning before January 1, 2007. A taxpayer may choose to use the alternative method on a timely filed (original or amended) tax return or during an audit. A taxpayer that uses the alternative method on an amended return or in the course of an audit must make appropriate adjustments to eliminate any double benefit arising from application of the alternative method to years that are not open for assessment. A taxpayer's choice to use the alternative method is evidenced by

employing the method. The taxpayer need not file any separate statement.

(6) *Effective/applicability date.* This paragraph (h) shall apply to taxable years beginning after December 31, 2006, and ending on or after December 21, 2007. However, taxpayers may choose to apply 26 CFR 1.904(f)-12T(h) as it appeared in the Code of Federal Regulations as of April 1, 2010, in lieu of this paragraph (h) to taxable years beginning after December 31, 2006 and ending on or after December 21, 2007, but ending before April 7, 2011 provided that appropriate adjustments are made to eliminate duplicate benefits arising from application of 26 CFR 1.904(f)-12T(h) to taxable years that are not open for assessment. In addition, if a taxpayer that is a financial services entity (as defined in § 1.904-4(e)(3)) chooses to apply 26 CFR 1.904(f)-12T(h) to taxable years ending before April 7, 2011, then as of the beginning of the taxpayer's first taxable year ending on or after April 7, 2011 any remaining balance in a passive category loss account that is attributable to a loss account in a pre-2007 separate category for high withholding tax interest shall be allocated to the general category or eliminated pursuant to § 1.904(f)-12(h)(4), and any remaining balance in a separate limitation loss account with respect to passive category income that is attributable to a loss account with respect to a pre-2007 separate category for high withholding tax interest will be recaptured in such year and subsequent taxable years as general category income or eliminated pursuant to § 1.904(f)-12(h)(4).

[T.D. 8306, 55 FR 31381, Aug. 2, 1990, as amended by T.D. 9260, 71 FR 24539, Apr. 25, 2006; T.D. 9368, 72 FR 72591, Dec. 21, 2007; T.D. 9452, 74 FR 27886, June 11, 2009; T.D. 9521, 76 FR 19273, Apr. 7, 2011]

§ 1.904(g)-0 Outline of regulation provisions.

This section lists the headings for §§ 1.904(g)-1 through 1.904(g)-3.

§ 1.904(g)-1 Overall domestic loss and the overall domestic loss account.

[Reserved] For further guidance, see the entries for § 1.904(g)-1T in § 1.904(g)-0T.

Internal Revenue Service, Treasury

§ 1.904(g)–1T

§ 1.904(g)–2 Recapture of overall domestic losses.

[Reserved] For further guidance, see the entries for § 1.904(g)–2T in § 1.904(g)–0T.

§ 1.904(g)–3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses. [Reserved] For further guidance, see the entries for § 1.904(g)–3T in § 1.904(g)–0T.

[T.D. 9371, 72 FR 72599, Dec. 21, 2007]

§ 1.904(g)–0T Outline of regulation provisions (temporary).

This section lists the headings for §§ 1.904(g)–1T through 1.904(g)–3T.

§ 1.904(g)–1T Overall domestic loss and the overall domestic loss account (temporary).

- (a) Overview of regulations.
- (b) Overall domestic loss accounts.
 - (1) In general.
 - (2) Taxable year in which overall domestic loss is sustained.
- (c) Determination of a taxpayer's overall domestic loss.
 - (1) Overall domestic loss defined.
 - (2) Domestic loss defined.
 - (3) Qualified taxable year defined.
 - (4) Method of allocation and apportionment of deductions.
- (d) Additions to overall domestic loss accounts.
 - (1) General rule.
 - (2) Overall domestic loss of another taxpayer.
 - (3) Adjustments for capital gains and losses.
- (e) Reductions of overall domestic loss accounts.
 - (1) Pre-recapture reduction for amounts allocated to other taxpayers.
 - (2) Reduction for amounts recaptured.
- (f) Effective/applicability date.
- (g) Expiration date.

§ 1.904(g)–2T Recapture of overall domestic losses (temporary).

- (a) In general.
- (b) Determination of U.S. source taxable income for purposes of recapture.
- (c) Section 904(g)(1) recapture.
- (d) Effective/applicability date.
- (e) Expiration date.

§ 1.904(g)–3T Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses (temporary).

- (a) In general.

(b) Step One: Allocation of net operating loss and net capital loss carryovers.

- (1) In general.
- (2) Full net operating loss carryover.
- (3) Partial net operating loss carryover.
- (4) Net capital loss carryovers.
- (c) Step Two: Allocation of separate limitation losses.
- (d) Step Three: Allocation of U.S. source losses.
- (e) Step Four: Recapture of overall foreign loss accounts.
- (f) Step Five: Recapture of separate limitation loss accounts.
- (g) Step Six: Recapture of overall domestic loss accounts.
- (h) Examples.
- (i) Effective/applicability date.
- (j) Expiration date.

[T.D. 9371, 72 FR 72599, Dec. 21, 2007]

§ 1.904(g)–1 Overall domestic loss and the overall domestic loss account.

[Reserved] For further guidance, see § 1.904(g)–1T.

[T.D. 9371, 72 FR 72599, Dec. 21, 2007]

§ 1.904(g)–1T Overall domestic loss and the overall domestic loss account (temporary).

(a) *Overview of regulations.* This section provides rules for determining a taxpayer's overall domestic losses, for establishing overall domestic loss accounts, and for making additions to and reductions from such accounts for purposes of section 904(g). Section 1.904(g)–2T provides rules for recapturing the balance in any overall domestic loss account under the general recharacterization rule of section 904(g)(1). Section 1.904(g)–3T provides ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and the recapture of separate limitation losses, overall foreign losses and overall domestic losses.

(b) *Overall domestic loss accounts—(1) In general.* Any taxpayer that sustains an overall domestic loss under paragraph (c) of this section must establish an account for such loss. Separate overall domestic loss accounts must be maintained with respect to each separate category in which foreign source income is offset by the domestic loss. The balance in each overall domestic loss account represents the amount of such overall domestic loss subject to recapture in a given year. From year to